HOGAN & HARTSON

L.L.P.

COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109
(202) 637-5600

BRUSSELS
LONDON
PARIS
PRAGUE
WARSAW
BALTIMORE, MD
BETHESDA, MD
McLEAN, VA

JOEL S. WINNIK
PARTNER
DIRECT DIAL (202) 637-5857

DOCKET FILE COPY ORIGINAL

RECEIVED
FEB 24 1997

February 24, 1997

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: GN Docket No. 96-245
In the Matter of
The Merger of MCI Communications Corporation and British Telecommunications plc

Dear Mr. Caton:

MCI Communications Corporation and British Telecommunications plc hereby submit an original and four copies of the Opposition & Reply filed in the above-captioned proceeding. We have also enclosed a 3.5 inch diskette of the Opposition & Reply in WordPerfect 5.1 for Windows in a "read only" mode. An additional copy is included to be stamped as a receipt copy.

If you have any questions with regard to this matter, please contact the undersigned.

Respectfully submitted,

Joel S. Winnik

Joel S. Winnik

Enclosures

cc: Service List

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Merger of MCI Communications	)	GN Docket No. 96-245
Corporation and	)	
British Telecommunications plc	)	

OPPOSITION & REPLY

Michael H. Salsbury
Executive Vice President
& General Counsel
Mary L. Brown
Sanford C. Reback
Larry A. Blosser
MCI Communications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-3606

Colin R. Green
Secretary and Chief Legal Adviser
British Telecommunications plc
BT Centre
81 Newgate Street
London EC1A 7AJ England

James E. Graf II
President
Joan M. Griffin
Cheryl Lynn Schneider
BT North America Inc.
601 Pennsylvania Avenue, N.W.
Suite 725, North Building
Washington, D.C. 20004

Joel S. Winnik
David J. Saylor
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

Attorneys for
British Telecommunications plc

Dated: February 24, 1997

TABLE OF CONTENTS

TABLE OF CONTENTS (Continued)

\\DC - 57378/37 - 0401997.06

SUMMARY

The applications of British Telecommunications ("BT") and MCI Communications Corporation ("MCI") to implement the merger of BT and MCI into Concert plc demonstrated that the merger will serve the public interest by promoting competition in local, national and international services and in opening foreign markets. This will lead in turn to greater consumer choice, more innovative services and lower prices. The Applicants also showed that American companies have effective competitive opportunities ("ECO") in UK telecommunications.

Only three parties sought denial of the Application -- all on grounds having little to do with the merger, but instead relating to separate disputes the petitioners have with MCI. Other commenters would require the Commission to adopt conditions on MCI authorizations duplicating policies of the UK Office of Telecommunications ("OFTEL") which they like, or forcing changes in pro-competitive and successful OFTEL policies that do not mirror the US practice. The FCC should reject these calls to impose merger conditions that would re-write the ground rules for competition and interconnection in the UK. Given that the US and the UK share similar goals of maximizing consumer benefits through competition, and that the UK has implemented a licensing regime and regulatory structure that have fully opened its telecommunications business to effective competition, the Commission should respect the judgment of its UK counterpart.

No one can doubt that the UK telecommunications business is fully open to effective competition by American companies under the authority of OFTEL.

- The UK has licensed 45 operators, including 20 subsidiaries of US carriers, to provide facilities-based international services. There are also more than 60 international resellers licensed by the UK.
- US carriers already own UK international facilities. BT will pro-actively make some of its own capacity available to new entrants at BT's cost and plans to acquire more for resale on these terms.
- OFTEL requires BT to interconnect with other carriers at trans-Atlantic and other cable landing stations and at local switching centers on a nondiscriminatory basis, and (as of August 1997) such interconnection is to be priced at LRIC.
- "Backhaul" networks from the cable stations to local switching centers will operate competitively, interconnecting to BT's cable stations by virtual co-location. Two backhaul facilities competing with BT, one American-owned, already interconnect to the TAT 12/13 cable station.
- As a result of a policy emphasizing local facilities competition, competitive local facilities-based networks now reach more than one-third of UK residential subscribers and will cover three-quarters by 2002. OFTEL's policies on carrier selection and dialing patterns are a key aspect of this successful policy, and are pro-competitive and reasonable in the UK context. Operators relying on indirect access for international long distance services are experiencing explosive growth.
- An ECO test does not apply to MCI's direct broadcast satellite license -- and in any case the UK satellite market is one of the most open in the world.

Since the formation of the BT-MCI alliance in 1994, no complaint has been made to the FCC alleging discrimination by BT in favor of MCI. Possible anti-competitive behavior about which inventive rivals speculated in 1994 simply never materialized. There is no basis for imposing additional conditions upon assumptions that such discrimination will occur in the future.

Finally, the merger advances the goals of the recently concluded World Trade Organization Agreement on Basic Telecommunications Services ("WTO"). Early grant of the Application will demonstrate the FCC's commitment to WTO principles and will be a significant step toward the establishment of the open and competitive worldwide telecommunications marketplace envisioned by that momentous Agreement.

The Commission should find that the Applicants have satisfied the ECO test and that the merger of MCI and BT is in the public interest.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The Merger of MCI Communications	)	GN Docket No. 96-245
Corporation and	)	
British Telecommunications plc	)	

OPPOSITION & REPLY

I. INTRODUCTION

The applications of British Telecommunications plc ("BT") and MCI Communications Corporation ("MCI") to implement the merger of BT and MCI into Concert plc ("Concert") demonstrated that the merger would serve the public interest by promoting local competition consistent with the Telecommunications Act of 1996 (the "1996 Act") 1/ and with rules and policies of the Federal Communications Commission ("FCC" or "Commission") implementing the Act. 2/

1/ Pub. L. No. 104-104, 110 Stat. 56 (1996).

2/ The Applicants also filed a notification of the proposed merger under Section 63.11 of the Commission's Rules, 47 C.F.R. § 63.11, and requested clearance under An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39. Concert will be the parent company of subsidiaries MCI and BT plc, a new company which will contain BT's UK operations. See Applications and Notification ("Application"), vol. One, Section II; MCI Communications Corporation and British Telecommunications plc Seek FCC Consent For Proposed Transfer of Control, Public Notice, GN Docket No. 96-245 (released Dec. 10, 1996).

Concert's resources should make MCI a stronger entrant into local markets, leading to greater consumer choice, more innovative services and lower prices. The Applicants also showed that the public interest in promoting competition in international services and in opening foreign markets will be served by the merger, and demonstrated that American companies have effective competitive opportunities ("ECO") in UK telecommunications.

Of the fifteen parties responding, 3/ only three sought denial of the Application -- all on grounds having little to do with the merger, but instead relating to separate disputes the petitioners have with MCI. 4/ Other commenters would encumber MCI's authorizations with unnecessary and anticompetitive conditions; extend the Commission's regulatory reach into UK matters currently handled by the UK Office of Telecommunications ("OFTEL"); and impose burdensome reporting requirements giving competitors improper insight into Concert's business plans and undermining the Commission's ongoing deregulatory

---

3/ The parties are: ACC Corp. ("ACC"); AT&T Corp. ("AT&T"); BellSouth Corp., Pacific Telesis Group, & SBC Communications Inc. ("BellSouth/PacTel/SBC"); Bell Atlantic; Deutsche Telekom AG ("DT"); Energis; Federal Bureau of Investigation ("FBI"); France Telecom ("FT"); Frontier; Primestar Partners L.P. ("Primestar"); Secretary of Defense ("DoD"); Sprint Corp. ("Sprint"); Time Warner Inc. ("Time Warner"); US West; WorldCom Inc. ("WorldCom").

4/ The petitioners are: Bell Atlantic; Primestar; Time Warner.

initiatives. 5/ In evaluating these comments, the Commission should be guided by the following principles.

First, the FCC should reject the calls of AT&T and other parties to impose merger conditions that would rewrite the ground rules for competition and interconnection in the UK. Given that the US and the UK share the goal of maximizing consumer benefits through competition, 6/ and that the UK has implemented a licensing regime and regulatory structure that have fully opened its telecommunications business to effective competition, the Commission should respect the judgment of its UK counterpart. If AT&T desires changes in the UK regulatory regime, its petition should be presented to OFTEL. The Commission has always emphasized the end results of a foreign regulatory system and not the

---

5/ See, e.g., Policy and Rules Concerning the Interstate, Interexchange Marketplace, DA 96-424 (CCB, released Oct. 31, 1996) ("IXC Forbearance Order"); Revision of Filing Requirements, DA 96-1873 (released Nov. 13, 1996) ("Detariffing Order").

6/ "OFTEL's aim is for customers to get the best possible deal in terms of quality, choice and value for money. Our main means of achieving this is by promoting effective and sustainable competition. More competition will lead to real choice -- three or more operators or service providers knocking at the door offering a full range of services at a price to suit the customer." A Guide to the Office of Telecommunications, Director General of the Office of Telecommunications at 2 (1996) (available at http://www.open.gov.uk/oftel/oftguide.html). The Commission's goals are much the same: "establishing an effectively competitive global communications market could result in reduced rates, increased quality, and new innovative services for U.S. consumers . . . ." Market Entry and Regulation of Foreign-affiliated Entities, Report and Order, 11 FCC Rcd 3873, 3877 (1995) ("Foreign Carrier Entry Order"), recon. pending.

specific means used to achieve those results. 7/ Indeed, the ECO test "purposely does not require mirror reciprocity" 8/ or perfect identity between the US and foreign regimes.

Second, this adjudicatory proceeding is not the proper forum to address issues of an industry-wide nature that may require industry-wide solutions. If, for example, US-UK submarine cable capacity is not keeping pace with demand, that issue can be resolved best in a general inquiry. It should not delay this merger.

Third, the Commission should resist the efforts of the Applicants' competitors to use this proceeding to reargue FCC decisions with which they

---

7/ ACC Global Corp./Alanna Inc., 9 FCC Rcd 6240, 6254 (1994) ("ACC/Alanna") ("We find for purposes of our regulatory analysis that it is more important for an equivalency determination to focus on the overall effect of the various elements of the foreign regulatory regime on the opportunities for viable international resale activity than the similarity of the regulatory structure to U.S. law.") (emphasis added); Telecom New Zealand Limited, File No. I-T-C-96-097, DA 96-2182 ¶ 33 (IB, released Dec. 31, 1996) ("TNZL Order") ("[t]he Commission's ECO test does not require a regulatory regime exactly patterned on that which exists in the United States."); see also Foreign Carrier Entry Order, 11 FCC Rcd at 3925 ("We believe the success of our equivalency standard is due to the fact that the emphasis has been on a broad set of guiding principles, rather than on a specific set of requirements that must be met by every foreign country. The four principles we find relevant in evaluating whether effective competitive opportunities exist are essentially the same as those that have guided us in determining the existence of equivalent resale opportunities in a particular country.").

8/ Market Entry and Regulation of Foreign-affiliated Entities, Notice of Proposed Rulemaking, 10 FCC Rcd 4844, 4862 (1995).

continue to disagree. 9/ These ill-timed reconsideration requests have no place in this proceeding.

Fourth, since the formation of the BT-MCI alliance in 1994, no complaint has been made to the FCC alleging discrimination by BT in favor of MCI. Possible anti-competitive behavior about which inventive rivals speculated in 1994 simply never materialized. There is no basis for imposing additional conditions upon assumptions that such discrimination will occur in the future.

Finally, the merger advances the goals of the recently concluded World Trade Organization Agreement on Basic Telecommunications Services ("WTO"). Early grant of the Application will demonstrate the FCC's commitment to WTO principles and will be a significant step toward the establishment of the open and competitive worldwide telecommunications marketplace envisioned by that momentous Agreement.

As shown in Section II below, the UK satisfies the ECO test in every respect. Section II also demonstrates that the proposed transfer of control of the direct broadcast satellite ("DBS") license of MCI Telecommunications ("MCIT," a subsidiary of MCI) does not occasion an ECO analysis.

9/ See, e.g., infra Section II.A.2.b, Section II.A.5.b, Section II.C.

II. THE PROPOSED MERGER IS IN THE PUBLIC INTEREST

A. The Record Demonstrates That the UK Satisfies Every Element of the Effective Competitive Opportunities Test for the Transfer of Control of Section 214 Authorizations

1. US Carriers Have the Legal Ability to Provide UK International Facilities-Based Public Switched Services and Have Access to Submarine Cable Capacity

No party disputes that the UK satisfies the first element of the ECO test, i.e., that there are no de jure barriers to entry. 10/ US carriers now have the ability to own UK international facilities which they can use to provide public switched telephone service. In addition to having granted, since 1991, approximately 150 licenses for domestic network operation and for international simple resale ("ISR") licenses, in December 1996 the UK Department of Trade and Industry ("DTI") issued international facilities licenses ("IFLs") to all 45 parties who applied for them, including 20 to subsidiaries of US carriers.

US carriers already own UK international facilities. 11/ Several US carriers (e.g., AT&T, Sprint, and WorldCom), as owner-members of submarine cable consortia, own a significant amount of whole (i.e., end-to-end) circuit capacity on the US-UK route, as well as half-circuit capacity matched with UK and European

---

10/ See Application, vol. One at 19-23.

11/ The Commission considers under the ECO test "whether there are de facto effective competitive opportunities or whether measures are in place to allow such competition to develop in the near future." Foreign Carrier Entry Order, 11 FCC Rcd at 3893 (emphasis added).

correspondents. As of January 31, 1997, for example, AT&T had acquired 457 whole circuit minimum investment units ("MIUs") on TAT 12/13, of which BT believes, none are currently in use. 12/ Despite the fact that AT&T, Sprint, WorldCom and other consortium members already own considerable whole circuit capacity in TAT 12/13, they disingenuously imply that BT "control[s]" access to US-UK submarine capacity and thereby has "the opportunity to discriminate" against IFL holders who need initial or additional cable capacity. 13/

BT's UK-end cable activities should not be subject to US-imposed requirements and conditions. First, the current circumstances of cable capacity do

---

12/ BT had 313 and MCI 284 whole MIUs on TAT 12/13. Sprint, DT and FT ("the Global One Parties") together had 200 and WorldCom/MFS had 115. BT believes that the Global One Parties have a substantial amount of currently unutilized capacity. BT has currently set aside 63 of its MIUs for resale to other operators who are not co-owners, and will make more available if it can acquire more. See note 22 infra and accompanying text.

13/ WorldCom at 6, 14; Sprint at 10-11; see also AT&T at 3-4, 28. AT&T would have the Commission hold up the merger until "BT undertakes" to ensure its new competitors all the cable capacity they require. AT&T at 29. Sprint wants the Commission "to oversee the allocation" of TAT 12/13 capacity to BT's competitors, presumably as a condition of approving the pending transfer of control applications. In what smacks of a rulemaking petition, WorldCom asks the Commission, inter alia, to "require BT": (1) to implement policies "promoting flexibility in the transfer of common reserve [indefeasible right of user ("IRU")] capacity to accommodate" BT's competitors; (2) to sell "currently unused IRU capacity . . . on a 'first come, first served' basis without . . . reference to [BT's] own future capacity requirements"; and (3) to administer the cable "under the same terms and conditions for all IRU owners." WorldCom at 17-18. None of these parties explain why BT is in a position to discriminate in offering cable capacity, given that BT does not control the allocation of capacity and that these other carriers are themselves competitive sources of supply.

not warrant such drastic steps. As of January 31, 1997, ninety-one percent of the TAT 12/13 capacity had been assigned to particular co-owners of the cable, and it appears that there remains a significant amount of unused capacity on the route. 14/ Importantly, under the cable construction and maintenance agreement for TAT 12/13, owners can and do resell whole circuit and half circuit capacity to non-owners on an IRU basis. 15/ While demand may be rising, cable supply is capable of being expanded in the near term to meet carrier requirements, both through the use of new transmission technology to multiply the system capacity of the existing TAT 12/13 cables, 16/ and through construction of new cables. 17/

Second, any short-term cable capacity shortfall that may develop will be an industry-wide problem that all the players (and, if necessary, the UK and US regulators) should address with an industry-wide solution, rather than by singling

---

14/ See note 12 supra and accompanying text.

15/ AT&T at 28-29.

16/ See TAT-12/TAT-13 Cable Network Construction and Maintenance Agreement ¶ 11(h) (Dec. 15, 1992). The consortium now has under consideration a proposal for installation of a wave division multiplexing system that would double the cable's capacity in two stages, with a 50% increase to be brought into service in the 3rd quarter of 1998, and a further 50% in the 3rd quarter of 1999.

17/ WorldCom (through MFS Globenet, Inc. ("MFS")) and Cable & Wireless plc have been authorized to "construct and operate an advanced fiber optic cable system (Gemini) between the United States and the United Kingdom on an expedited basis." MFS Globenet, Inc. and Cable & Wireless plc, File No. SCL-96-004(M), DA 96-2151 ¶ 9 (IB, released Dec. 18, 1996). Gemini is currently expected to go into service in the 2nd quarter of 1998 and to have considerable capacity available for other carriers besides its owners.

out BT or burdening MCI's authorizations with special conditions. Neither BT nor MCI, nor the two together, control the many factors that determine the availability of cable capacity to meet future demand. 18/ Given these circumstances, the Commission (and OFTEL on the UK end) can fashion broad-based solutions to any capacity problem and target individual companies as part of its general regulatory oversight. 19/

18/ Cable systems are generally built by consortia that share the costs and the risks. The owners collectively make the critical decisions regarding how much capacity should be designed into the system, how much to allocate initially and how much to leave in reserve; if and when to employ compression technologies; whether and when to invite-in additional owners; whether to sell reserve capacity to non-owners; how to allocate capacity if demand exceeds supply; how to structure the minimum size of investment units; and whether to make half as well as whole (end-to-end) circuits available. Additionally, individual owners make judgments about how much capacity they will need; whether to risk investment in additional capacity to meet possible but uncertain future needs; whether to convey unutilized capacity, and in what forms and at what prices, and to whom to convey such capacity; with which correspondents to match their half-circuits; whether to rely solely on cable or to also have satellite capacity for backup; and so on.

19/ The Commission has imposed conditions on all common carrier authorizations, including those for TAT 12/13, retaining the power to review the capacity provisioning practices of the consortia and "to reallocate U.S. carriers' interests and capacity . . . as the public interest may require to accommodate additional carriers . . . ." Joint Application for Authorization Under Section 214 to Construct and Operate a High Capacity Digital Submarine Cable Network Between the United States, the United Kingdom and France, 8 FCC Rcd 4810, 4815 (1993) ("TAT 12/13 Authorization"). In addition, the Commission's rules prevent any US carrier from entering into a preferential relationship with a foreign carrier with respect to the allocation, provisioning or pricing of submarine cable facilities. See 47 C.F.R. §§ 63.14, 63.18 ("no special concessions" rule and certification).

Third, BT has pro-actively sought to ensure the availability of capacity for new IFL licensees. By contrast, while professing sympathy for "new entrants," AT&T has not volunteered to sell any of its own TAT 12/13 whole circuits, 20/ yet it implies there is something wrong in affording BT "discretion" (subject to appropriate OFTEL oversight) to decide whether and on what terms to sell its circuits to new IFL licensees. 21/ BT has taken the lead in seeking to ensure that the new entrants will have adequate cable capacity at a reasonable price. At the October 22-23, 1996 TAT 12/13 General Committee meeting, BT proposed that the consortium change its policy to permit the expected new international licensees to procure IRU capacity directly from the consortium. This proposal was not adopted. Having failed to convince a majority of the other owners to address the new competitive environment on the US-UK route, BT plans to offer 63 MIU of its wholly-owned capacity for resale to new entrants at a price set at a level which will recover BT's costs of acquiring that capacity from the consortium. 22/ BT will

---

20/ Neither Sprint nor its part-owners/partners DT and FT have made such offers.

21/ AT&T at 29. In this regard, WorldCom states "that it has not experienced with BT the same delaying tactics and discriminatory pricing that it has experienced with AT&T" in connection with cable matters. WorldCom at 15.

22/ OFTEL believes that BT (and other cable owners within OFTEL's jurisdiction) should sell capacity in TAT 12/13 on the basis of the "true cost" of purchasing capacity from the consortium, i.e., the sum of the capital costs, interest and maintenance charges less BT's share of the consortium's profits made by selling the capacity at a price above its Modern Equivalent Asset valuation. While BT has reservations about this approach, it is willing to accept it on the understanding that other co-owners will sell capacity on the same basis.

similarly make available any additional capacity which it is able to acquire. 23/ BT knows of no comparable action by any other owner. 24/

Thus it would be both ineffective and inappropriate to impose on BT and MCI the responsibility for remedying any capacity shortfall or other problem that they alone will not have created and they alone will not be able to resolve. 25/

2. Backhaul and Interconnection for Termination and Origination of International Telecommunications Services Is Available in the UK Today to US Carriers on Nondiscriminatory Terms and Conditions

None of the comments undermines the conclusion the Commission itself has previously reached: the UK affords US carriers reasonable and

---

23/ In the event that AT&T chooses to by-pass BT in providing US-UK services, and has insufficient capacity of its own for the purpose, BT would be willing if requested to assign to AT&T half-circuits owned by BT that BT uses to provide service jointly with AT&T.

24/ In addition, BT has agreed with OFTEL to allow new IFL licensees to convert their International Private Leased Circuits ("IPLCs") to IRUs in such a manner that resellers changing over into facilities-based providers will be in no worse financial position than if their IPLC had been scheduled to terminate when they acquired IFL status.

25/ Nor is it appropriate for the Commission to rule, as AT&T urges, that OFTEL place a specific condition in BT's and Mercury's Licences "requiring . . . those companies to sell existing capacity they have previously acquired, or to procure capacity from the reserve and transfer such capacity to new entrants." AT&T at 28-29. OFTEL has ample oversight authority to address equitably and promptly any industry-wide capacity problem or specific discriminatory abuse on its side of the Atlantic. See Section II.A.4 infra. In fact, OFTEL is currently conducting a broad inquiry into the operations of cable consortia, examining both alleged restrictions on the sale of capacity, and also IRU pricing -- but without a view to imposing on any individual consortium member exclusive responsibility for what properly should be shouldered by the broader industry group.

nondiscriminatory charges, terms and conditions for interconnection to domestic facilities for termination and origination of international services. 26/

Instead of challenging the Application pursuant to the ECO analysis set forth in the Foreign Carrier Entry Order, the Applicants' competitors ask for ad hoc restrictions that would (1) insert the FCC into the regulation of UK "backhaul services" 27/ and (2) require OFTEL to reverse its policies on long distance carrier selection and unbundling of BT facilities. 28/ The Commission should resist the

---

26/ Foreign Carrier Entry Order, 11 FCC Rcd at 3892; ACC/Alanna 9 FCC Rcd at 6252. The Commission has recognized that BT is required by the terms of its Licence to interconnect its network with those of other individually licensed carriers (Condition 13) and to refrain from showing undue preference or undue discrimination in relation to its obligations under its Licence (Condition 17). Id. Even AT&T acknowledges that BT's interconnection charges are "relatively low." AT&T at 17.

In addition, OFTEL recently announced its proposal to change the cost base for interconnection charges from fully allocated historic costs to long run incremental costs to "better reflect[ ] the basis on which competitive businesses in commercial markets make investment decisions and thus provide the industry with more appropriate price signals." Network Charges From 1997, Director General of the Office of Telecommunications (Dec. 1996) ("Network Charges From 1997") (available at http://www.open.gov.uk/oftel/netcha7/contents.html).

BT expects that the introduction of LRIC-based prices in August 1997 will result in a significant reduction in its interconnection prices, above and beyond the trend of recent years, which has been for prices to fall rapidly in line with volume increases and cost reductions. Further sizable reductions will follow over the next four years as a result of the price cap on BT's network prices which will be introduced at the same time. This will remove the need for annual price determinations by OFTEL. Instead, OFTEL would establish a broad framework of controls within which BT would set prices and the degree of OFTEL control would depend on the competitiveness of supply of the interconnection element.

27/ ACC at 12; AT&T at 29-30; WorldCom at 16-18.

28/ ACC at 4-6; AT&T at 23-25; Energis at 2; FT at 4, 7; Frontier at 2; WorldCom at 10.

invitation to extend its reach into UK affairs and should refuse to adopt merger conditions that would substitute the FCC's judgment for OFTEL's on matters that are unquestionably within the authority and competence of the UK regulator.

a. UK Backhaul Services Are Provided on a Nondiscriminatory Basis at Competitive Prices

No party has alleged even a single instance of anti-competitive behavior by BT concerning the provision of backhaul services. 29/ The Applicants' competitors merely speculate about what could go wrong. Yet no basis exists for concern both because OFTEL has in place a comprehensive regulatory program that requires nondiscriminatory access at prices it oversees, and because actual competition in the provision of backhaul service ensures competitive pricing.

BT's obligation to connect to other operators at the cable station arises from Condition 13 of its Licence. At the cable station, BT provides virtual co-location to its competitors through "in-span handover," which is functionally identical to the in-span interconnection that BT provides at other points where operators connect to its system. 30/ The price for this service has been reviewed by

---

29/ "Backhaul" refers to connections to the land side of UK cable stations and circuitry from a cable station to an operating center of BT or another operator.

30/ In-span handover at a cable station is simply a physical melding of the BT fiber coming out of the cable station with the other operator's fiber in a protected underground enclosure. AT&T's statement (at 29-30) that "'co-location' of competing carrier facilities at the cable station has not been debated yet in the UK" is beside the point given that MFS and Energis (in addition to Mercury) are already co-located with BT at the Land's End station and are each providing backhaul in competition with BT.

OFTEL and will be set on the basis of long run incremental costs when the new interconnection regime comes into effect in August 1997.

BT provides backhaul services from the in-span handover point to a BT (or other operator) switching center under Condition 1 of its Licence, requiring it to meet all reasonable demand for telecommunications service in the UK. Condition 17 of the BT Licence specifically requires BT to provide backhaul on a nondiscriminatory basis. 31/

In addition, competition among backhaul network operators assures nondiscriminatory and competitively priced access from the cable landing stations

---

31/ Thus, AT&T is incorrect when it asserts that "there is no present legal obligation on BT or MCL [Mercury] to permit competitors the right to access [cable] capacity at the [cable stations]," or for "BT or MCL [to] sell to new entrants the 'backhaul interconnection' from the cable station to the inland networks of AT&T-UK and others." AT&T at 29-30. WorldCom is correct that BT currently does not sell backhaul in lots of 45 Mbps. WorldCom at 16. However, BT recently received a request from an operator for 34/45 Mbps capacity. If provision of such capacity is technically and economically feasible, BT will have an obligation under Condition 1, as well as a commercial incentive, to offer it.

WorldCom's concerns about the timing for provisioning of additional Digital Access Cross-Connect Switches ("DACS") capacity is unfounded. WorldCom at 16. In normal circumstances, BT's lead time for provisioning of additional capacity via a DACS is 35 working days. When BT and an operator are interconnecting at a particular location for the first time, BT usually commits contractually to complete provisioning within six months (the estimated worst case, where rights-of-way need to be obtained or new construction undertaken), but BT normally expects such provisioning to be completed in less than six months. In an unusual case, e.g., where an operator so sharply increases its previously forecast requirements that new cross-connect equipment must be ordered, the lead time can extend to 12 months. Nevertheless, the BT Licence assures that no operator will face discrimination in provisioning timescales or in maintenance and restoration arrangements.

to local networks. Many of the new entrants are already authorized to build backhaul facilities under their domestic licenses, and others can obtain the necessary authorization without difficulty if they wish. MFS and Energis have already built facilities from the Land's End cable station serving TAT 12/13. 32/ OFTEL has classified the backhaul market as "prospectively competitive," and its policy is not to engage in price regulation of backhaul services so long as the new entrants have a choice of competitors. 33/

UK provisioning and pricing matters are within the oversight of OFTEL, which has a record of commitment to full and fair competition, and there is no reason for the FCC to impose special conditions of its own concerning regulatory matters competently addressed by and within the province of UK regulators. 34/

32/ Alternative backhaul networks are also being planned or constructed to other cable stations including one located in Redcar, England serving CANTAT 3.

33/ Because BT's nationwide backhaul tariffs are distance-dependent and all employ the same per-kilometer charge, price competition on the very competitive TAT 12/13 backhaul route will also govern BT's prices for backhaul services on other routes where there may be less competition. OFTEL retains authority under the fair trading power (Condition 18A of BT's License) and other license conditions relating to interconnection and non-discrimination to investigate and address any allegations concerning backhaul services.

34/ In its clearance of the original investment by BT in MCI, the Commission found that certain record-keeping and reporting requirements, and a prohibition on "special concessions," were "necessary and sufficient at this time in order to guarantee competing US carriers and their customers access on a nondiscriminatory basis to basic services . . . ." MCI Communications Corp., 9 FCC Rcd 3960, 3970 (1994). In view of the effective competitive opportunities now provided to American companies in the UK, these record-keeping and reporting requirements are no longer required or appropriate. In addition, the no special

[Footnote continued]

b. OFTEL's Pro-Competitive and Successful Interconnection Policies are Tailored to UK Circumstances

Several parties argue that the Commission should impose a requirement that BT implement the same dialing patterns and carrier selection procedures used in the US, 35/ notwithstanding an explicit OFTEL decision to the contrary. 36/ Some also argue that the Commission should force OFTEL to substitute US policies on unbundling of the local loop for OFTEL's own access approach. 37/ The Commission has rejected such arguments before, 38/ and it should do so again. None of the conditions sought by these parties -- intended to force the UK to adopt interconnection policies that precisely mirror those of the

---

[Footnote continued]

concessions rule, 47 C.F.R. § 63.14, and the certification requirements in 47 C.F.R. § 63.18 make the special concessions condition redundant.

35/ ACC at 3-9; AT&T at 21-26; Energis at 2-3; FT at 6.

36/ See OFTEL's Policy on Indirect Access, Equal Access and Direct Connection to the Access Network, Director General of the Office of Telecommunications (July 1996) ("OFTEL Indirect Access Policy") (available at http://www.open.gov.uk/oftel/access96.html).

37/ WorldCom at 8, 10-14.

38/ See Foreign Carrier Entry Order, 11 FCC Rcd at 3893 ("We will not go, however, as far as AT&T suggests by requiring that equal access or number portability be present in order for us to find effective competitive opportunities in the foreign market."); ACC/Alanna, 9 FCC Rcd at 6263 ("We therefore conclude, as we did with respect to Canada, that the lack of equal access does not preclude a finding of equivalency of the U.K. resale market."); fONOROLA, 7 FCC Rcd 7312, 7315 n.32 (1992) ("Therefore, we find that the lack of equal access is not sufficient to prevent an equivalency determination.").

US -- is necessary or appropriate for the UK. Both US and UK regulators share the fundamental view that fostering competition is the best way to promote consumer interests, but they have adopted different means to reach that goal.

The difference is attributable to the way in which telecommunications markets and competition have developed in the two countries. In the UK, the development of competitive cable television and wireless industries, and regulatory policies designed to foster competition in cable and wireless, strongly influenced decisions that UK regulators have made about equal access policies and local loop unbundling. 39/ Unlike the US, which has had for some years a relatively mature cable television industry that provides substantial video competition, cable systems in the UK are being constructed in the 1990s to provide competition in both the video and telephony markets. The cumulative effect of cable TV franchises granted by the end of 1996 is that over 75% of UK homes are now within franchise areas, of which almost half already have been passed by cable networks and all should be

39/ In 1982 (even before BT was privatized), the UK government authorized the first competitive telecommunications provider -- Mercury -- to build and operate an independent network to compete across the full range of telecommunications services. In the following years, the UK authorized facilities-based entry by four cellular and broadband PCS providers (1987 and 1989), cable franchisees with integrated networks capable of providing local telephone service as well as cable TV (1987), competitive payphone providers (1988), and others. The UK ended its duopoly policy in 1991. A Brief History of Recent UK Telecoms and OFTEL, Director General of the Office of Telecommunications (1996) ("OFTEL History") (available at http://www.open.gov.uk/oftel/history.html).

passed by 2002. 40/ As issues such as dialing arrangements and loop unbundling are raised before the UK regulator, OFTEL has expressed concerns that its highly successful policies to encourage rapid build-out of cable television networks and other alternative infrastructures, should not be jeopardized by decisions that could interfere with investment in those competitive networks. 41/

The equal access policies in the US confront a different set of market realities. As telecommunications competition emerged in the US, local and long distance telecommunications were treated as separate market segments, and the long distance segment was considered potentially competitive while the local

---

40/ "The UK's aim is that all customers should have the choice of at least three operators. These might comprise BT, a cable operator, a radio access operator and/or an indirect access operator. For many residential customers, this is now a reality." See OFTEL Indirect Access Policy at ¶ 7. For example, since the beginning of the UK cable industry, cable franchisees have been allowed, by the terms of their licenses, to provide telephony over their networks. As OFTEL has stated, "[t]he UK was fortunate that, at the time it decided to liberalize the market beyond the initial BT/Mercury duopoly, the cable TV networks were little developed and the possibility of providing telephony over new cable TV networks, with a consequent double revenue stream, made the installation of alternative new cable telephony networks viable." Trade & Industry Select Committee Telecommunications Regulation Enquiry, Memorandum by the Director General of Telecommunications at ¶ 15 (Jan. 1997) ("TISC Submission").

41/ "[O]pen access would raise issues on infrastructure competition as operators would be discouraged from building new networks if there was a risk that the could not earn an appropriate return." OFTEL Indirect Access Policy at ¶ 29. OFTEL specifically considered and, based on a cost-benefit analysis, rejected the adoption of a dialing pattern for long distance carrier selection similar to the "equal access" approach used in the US. OFTEL's consultants estimated that, given the widespread use of "easy access" in the UK, the additional benefits of dialing parity and presubscription (£80m over 10 years) would not outweigh the costs (£162m over 10 years) of introducing it.